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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,357	01/23/2002	Teruyuki Maruyama	2271/66669	9272

7590 10/31/2006

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EXAMINER

BURLESON, MICHAEL L

ART UNIT	PAPER NUMBER
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2625

DATE MAILED: 10/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/055,357

Applicant(s)

MARUYAMA, TERUYUKI

Examiner

Michael Burleson

Art Unit

2625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) 6 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 2, 4 and 5 is/are allowed.
- 6) ☒ Claim(s) 3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments, see page 6, filed 07/14/2006, with respect to claims 1-6 have been fully considered and are persuasive. The final rejection of claims 1-6 has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of 35 USC § 101 of claim 3.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Regarding claim 3, the claimed invention is directed to non-statutory subject matter. Data structures that are not embodied on a computer readable medium are non-statutory (see USC 101 guidelines page 52). Applicant claims a recording medium readable by a machine and tangibly embodying a program of instructions executable by the machine for transmitting image data to a server apparatus, said program causing a computer to function. USC 101 guidelines clearly states that a computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory (USC 101 guidelines page 52).

***Priority***

1. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d).

***Allowable Subject Matter***

2. Claims 1,2,4 and 5 allowed.
3. Regarding claim 1,4 and 5, Prior art fails to teach wherein a secondary storage means having a storage capacity greater than that of a primary storage means.

***Conclusion***

Any inquiry concerning this communication should be directed to Michael Burleson whose telephone number is (571) 272-7460 and fax number is (571) 273-7460. The examiner can normally be reached Monday thru Friday from 8:00 a.m. – 4:30p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Moore can be reached at (571) 272-7437

Michael Burleson  
Patent Examiner  
Art Unit 2626



**DAVID MOORE**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 2600**

MIb  
October 29, 2006

Application/Control Number: 10/055,357  
Art Unit: 2625

Page 4